

	)	
UNITED STATES OF AMERICA,	)	
	)	Case No.: 1:03CV2486
<i>Plaintiff,</i>	)	
	)	
v.	)	JUDGE: Gladys Kessler
	)	
DNH INTERNATIONAL SARL,	)	
DYNO NOBEL, INC.,	)	DECK TYPE: ANTITRUST
EL PASO CORP., and	)	
COASTAL CHEM, INC.,	)	
	)	DATE STAMP: May 6, 2004
<i>Defendants.</i>	)	
	)	

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), plaintiff, the United States of America (“United States”), moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding.<sup>1</sup> The proposed Final Judgment (Attachment 1) may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement, filed by the United States in this matter on January 21, 2004, explains why entry of the proposed Final Judgment is in the public interest. In addition, the Certificate of Compliance (Attachment 2), filed by the United States in support of this motion, sets forth the steps taken by the parties to comply with all

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applicable provisions of the APPA and certifies that the statutory waiting period required in advance of the entry of Final Judgment has expired.

## **I. Background**

On December 2, 2003, the United States filed a civil antitrust lawsuit alleging that the proposed acquisition by DNH International Sarl's subsidiary Dyno Nobel, Inc. ("Dyno"), of two industrial grade ammonium nitrate ("IGAN") production facilities owned by Coastal Chem, Inc. ("Coastal"), would substantially lessen competition in the Western North America IGAN market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that Coastal and one other firm are the primary suppliers of IGAN consumed in Western North America, accounting for over 80 percent of IGAN sales in that region. Dyno's 50-percent interest in an IGAN production facility in Vineyard, Utah (the "Geneva facility") makes it the best located of three fringe IGAN producers that supply the region. The acquisition would combine Coastal's IGAN facilities at Cheyenne, Wyoming and Battle Mountain, Nevada with Dyno's interest in the Geneva facility. Such a reduction in competition would result in consumers of IGAN in the western United States paying higher prices for IGAN. Accordingly, the prayer for relief in the Complaint seeks (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act and (2) a permanent injunction that would foreclose DNH International Sarl or any of its subsidiaries from purchasing Coastal's Cheyenne or Battle Mountain IGAN production facilities.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. The United States later filed a Competitive Impact

Statement, which explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest. Under the Hold Separate Stipulation and Order and the proposed Final Judgment, Dyno was required within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable business operation, its interest in the Geneva facility. The Hold Separate Stipulation and Order and the proposed Final Judgment required Dyno to preserve, maintain and continue to operate the Geneva and Battle Mountain facilities as independent, ongoing, economically viable competitive businesses, with the management, sales and operations held separate, distinct, and apart from those of Dyno's other operations. Dyno complied with the terms of the Hold Separate Stipulation and Order and now has complied with the terms of the proposed Final Judgment by divesting its interest in the Geneva facility on May 4, 2004, to Austin Powder Company ("Austin"). The United States has approved Austin as a purchaser of Dyno's interest in the Geneva facility.

The Hold Separate Stipulation and Order provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## **II. Compliance with the APPA**

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. § 16(b). In this case, the comment period terminated on April 18, 2004, and the United States received no public comments. The United States files

today a Certificate of Compliance in support of this motion stating that all applicable requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

### **III. Standard of Judicial Review**

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” 15 U.S.C. § 16(e). In making that determination, the Court may consider:

- 1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
- 2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its Competitive Impact Statement previously filed with the Court on January 21, 2004, the United States has explained the meaning and proper application of the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. There has been no showing that the proposed settlement constitutes an abuse of the United States’ discretion or that it is not within the range of settlements consistent with the public interest.

### **IV. Conclusion**

For the reasons set forth in this Motion and in the Competitive Impact Statement, the

Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment, provided as Attachment 1, be entered as soon as possible.

Dated: May 6, 2004

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Joshua P. Jones  
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202-307-1031

**CERTIFICATE OF SERVICE**

I, Joshua P. Jones, hereby certify that on May 6, 2004, I caused copies of the Plaintiff's Motion for Entry of Final Judgment to be served on Defendants DNH International Sarl, Dyno Nobel, Inc., El Paso Corporation, and Coastal Chem, Inc., by mailing these documents first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

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